

## EXHIBIT B

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

-----X MDL NO. 1456

IN RE: PHARMACEUTICAL INDUSTRY : CIVIL ACTION:

AVERAGE WHOLESALE PRICE LITIGATION : 01-CV-12257-PBS

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THIS DOCUMENT RELATES TO: :

U.S. ex rel. Ven-A-Care of the : CIVIL ACTION:

Florida Keys, Inc. v. Abbott : 06-CV-11337-PBS

Laboratories, Inc. :

-----X

IN THE CIRCUIT COURT OF

MONTGOMERY COUNTY, ALABAMA

-----X

STATE OF ALABAMA, : CASE NO.

Plaintiff, : CV-05-219

v. :

ABBOTT LABORATORIES, INC., : JUDGE

et al., : CHARLES PRICE

Defendants. :

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<p style="text-align: right;">Page 282</p> <p>1 at the Office of Inspector General; that buying 2 groups are able to negotiate their prices directly 3 with manufacturers and suppliers?</p> <p>4 MR. NEAL: Objection as to form. 5 You can answer.</p> <p>6 THE WITNESS: I don't remember if that 7 was true of all buying groups. I'm not sure which 8 part of your question you want me to answer.</p> <p>9 BY MR. COOK:</p> <p>10 Q. Is it consistent with the work that you 11 did while at the Office of Inspector General that 12 buying groups are able to offer lower drug purchase 13 prices to their members as a result of their 14 ability to negotiate prices directly with drug 15 manufacturers?</p> <p>16 A. I think --</p> <p>17 MR. NEAL: The same objection. 18 You can answer.</p> <p>19 THE WITNESS: I believe that what I -- 20 that we wrote in the report there is what we 21 believed to be true.</p> <p>22 BY MR. COOK:</p>	<p style="text-align: right;">Page 284</p> <p>1 negotiated directly with those manufacturers, 2 correct?</p> <p>3 A. I know that they had lower prices. What 4 -- my recall is that they had -- when I was looking 5 at their prices, through whatever source we had, 6 that their -- the prices in some instances were 7 lower than the Medicare allowance amount.</p> <p>8 Q. Do you recall any instance in which a 9 buying group was not able to negotiate a lower 10 price?</p> <p>11 A. I don't remember.</p> <p>12 Q. Do you recall any communications with 13 the Health Care Financing Administration that 14 related in any way to the work you did on this 15 comparison of Albuterol Sulfate prices?</p> <p>16 A. This specific report?</p> <p>17 Q. Let's start with this specific report.</p> <p>18 A. If this -- if it followed the normal 19 routine of our office, we would have had an 20 entrance conference and an exit conference with 21 HCFA. I don't know if we did or not. That would 22 have been the normal routine.</p>
<p style="text-align: right;">Page 283</p> <p>1 Q. Let me put it this way: Did you -- you 2 surveyed a number of buying groups in connection 3 with various reports that you did, correct?</p> <p>4 A. I believe I did.</p> <p>5 Q. And did you consistently find that 6 buying groups were able to negotiate lower prices 7 than were individual retail customers?</p> <p>8 A. I don't know if I consistently found 9 that because I don't remember what the results of 10 every buying group that we went to for every drug 11 that we reviewed was.</p> <p>12 Q. And you don't have a sense of what the 13 results of your -- of your findings and your 14 investigations were?</p> <p>15 A. The inspections, I mean, I remember 16 overall that we did drug work. I remember that we 17 went to buying groups. I don't remember what the 18 individual results of the -- of all of that data 19 collection was.</p> <p>20 Q. Well, you do remember that some buying 21 groups you found were able to negotiate lower 22 prices from drug manufacturers because they</p>	<p style="text-align: right;">Page 285</p> <p>1 Q. Well, let me ask it more generally. Over 2 the nine years in which you worked on drug pricing 3 reports, do you recall any communications with HCFA 4 relating to drug pricing?</p> <p>5 A. Yes.</p> <p>6 Q. What communications do you recall with 7 HCFA relating to drug pricing?</p> <p>8 A. I know that we have entrance and exit 9 conferences with them for our inspections.</p> <p>10 Q. And do you remember the specifics of any 11 of those entrance and exit --</p> <p>12 A. No.</p> <p>13 Q. -- conferences? You don't -- do you 14 remember who was present for any of those entrance 15 and exit conferences?</p> <p>16 A. If I was involved in the report, I would 17 be present. If other staff members were involved 18 in the report, they would be present. Most likely 19 our manager, Robert Vito, would have been present.</p> <p>20 And then whatever staff that HCFA or CMS chose to 21 send would be at the meetings.</p> <p>22 Q. Do you remember any of the</p>

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<p>1 recommendations that you made for HCFA about how 2 they could or should change their drug 3 reimbursement policy?</p> <p>4 A. I don't remember the specific text. I 5 mean, through the -- through the years, we 6 suggested they pay more appropriately. I believe 7 that some of the earlier recommendations were to 8 have -- potentially have a rebate program like 9 Medicaid did; to use a -- a greater discount on 10 average wholesale price; competitive bidding, I 11 think, was an -- was one other option we might have 12 floated.</p> <p>13 Q. Do you remember any other of the 14 recommendations that you made to HCFA?</p> <p>15 A. I don't remember any right now, offhand.</p> <p>16 Q. Tell me, how typically does an entrance 17 conference work for one of these reports?</p> <p>18 A. Typically we would -- for CMS, we would 19 write a design -- that's now, it's changed through 20 the years. We would write a design -- we'll write 21 a design, it would be submitted to headquarters, it 22 would be approved, and we would send the design to</p>	<p>1 A. Yes. 2 Q. And sit down with them? 3 A. Yes. 4 Q. And for the entrance conferences on 5 these various drug pricing reports, do you remember 6 the identities of any of the HCFA people with whom 7 you spoke?</p> <p>8 A. I remember somebody named Joel. 9 Q. Joel?</p> <p>10 A. I don't recall the other names.</p> <p>11 Q. And then you would have an exit 12 conference?</p> <p>13 A. Yes.</p> <p>14 Q. All right. Tell me how the exit 15 conference comes about.</p> <p>16 A. The exit conference, as I said, now, 17 would come about after we complete the working 18 draft and it's approved through our central office 19 processing -- process, we would then provide CMS 20 with an advanced copy of the working draft and sit 21 down with them and present our findings and 22 recommendations and, again, hear their comments and</p>
<p style="text-align: center;">Page 287</p> <p>1 CMS, or HCFA, and then we would meet to discuss it. 2 That's the entrance conference.</p> <p>3 Q. And what would be -- well, you said that 4 that process has changed over the years?</p> <p>5 A. Well, I think that when I first started, 6 I don't remember if we sent the design first or 7 gave it to them, which I -- I don't remember the 8 actual -- what the process was.</p> <p>9 Q. And what was the purpose of sitting down 10 with HCFA, now CMS, at the beginning of the 11 inspection process?</p> <p>12 A. I believe the process was to get 13 feedback from CMS about our design. To present our 14 design to them in a presentation, and then to hear 15 or have any questions or comments they may have.</p> <p>16 Q. And then how long would these 17 conferences typically last?</p> <p>18 A. An hour.</p> <p>19 Q. In person or by telephone?</p> <p>20 A. Well, most of them, we would have done 21 in person in Baltimore.</p> <p>22 Q. So you would go down to HCFA offices?</p>	<p>1 any questions they have. 2 Q. And the written response of HCFA that I 3 -- that I see attached to these reports, does that 4 come before or after the exit conference?</p> <p>5 A. After the exit conference.</p> <p>6 Q. And so you give them a draft ahead of 7 time so they can read it and digest it. About how 8 long do you give them to understand the report 9 before you have a conference?</p> <p>10 A. A week or two. I think it's like -- 11 like two weeks, sometimes it's a week.</p> <p>12 Q. How do you determine who at the -- at 13 the agency to send the report to?</p> <p>14 A. Well, it's sent by our liaison staff, 15 our special staff in headquarters. And if we have 16 specific people that we have had conversations with 17 during the course of the study, we ask that it be 18 sent to them.</p> <p>19 But they also have a distribution list they 20 send to, I believe, over to the audit liaison in 21 CMS, and then they decide who to distribute it to.</p> <p>22 Q. Okay. And so you send it out, they</p>

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1 digest it. You go down to Baltimore again?	1 individuals who attended any of the exit
2 A. Yes --	2 conferences for the drug pricing reports you did?
3 Q. And you sit down --	3 A. Well, if I had written it and been the
4 A. Usually.	4 team leader, I would have attended.
5 Q. -- with them -- sometimes it's here?	5 Q. Right.
6 A. No, it's never here. It might be on the	6 A. Robert Vito, my manager, would have
7 phone.	7 attended. Usually your program specialist, who was
8 Q. Okay. So you go down there or by	8 an OEI staff member in our central office in
9 telephone, one or the --	9 Baltimore, would attend. And then if we had other
10 A. Yes.	10 team members, they may attend or may not attend.
11 Q. -- other? Sit in a conference room like	11 And then the CMS staff would attend.
12 this?	12 Q. Okay. And what's the typical back and
13 A. (No verbal response.)	13 forth in one of these exit conferences?
14 Q. How many people?	14 A. Typically we put copies on the table,
15 A. It's -- there is no standard. It could	15 because even though they're supposed to have copies
16 be --	16 beforehand, they don't always read them or get
17 Q. What's the smallest one you've ever had?	17 them, and then we would most likely make a
18 A. I think we had one where no one showed	18 presentation, just, you know, speaking at a
19 up, and then --	19 conference table like this, present our findings,
20 Q. That's so depressing.	20 or in the case of the entrance, our design, and
21 A. -- and then the audit liaison was there,	21 then we would open it up to questions or concerns.
22 and they might have brought one other person in.	22 Q. And is any record made of the exit or
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1 That's the smallest I've ever been in.	1 entrance conference?
2 Q. And the largest?	2 A. There are notes taken.
3 A. I couldn't tell you. Probably more than	3 Q. And who's responsible for taking notes
4 twenty.	4 at these conferences?
5 Q. All right. Do you remember what report	5 A. The team.
6 it was that you had more than twenty people?	6 Q. And so each team member takes individual
7 A. No, I don't.	7 notes?
8 Q. It didn't stick in your mind that that	8 A. They may, but usually people will each
9 was a particularly hot report?	9 take notes, if they want to, but the team knows
10 A. I think all the reports are hot.	10 that somebody has to. And then one member of the
11 Q. I know. But one that your client agency	11 team would either, in the old days, just have it
12 thought was particularly hot, because so many	12 written, or it would now probably make an
13 people showed up to?	13 electronic -- type it up and make it electronic.
14 A. I don't recall which ones were the --	14 Q. And so for each exit and entrance
15 Q. Do you remember how big, for example,	15 conference, there should be a written record from
16 these Albuterol Sulfate reports?	16 OIG of -- some sort of written record of what
17 A. I don't remember.	17 occurred at the meeting?
18 Q. Do you know if you had a joint exit and	18 A. Should be.
19 entrance conference for these various reports that	19 Q. Right. At some level of generality?
20 were done at about the same time?	20 A. (No verbal response.)
21 A. I do not remember.	21 Q. To the best of your knowledge, would a
22 Q. Okay. Do you remember any specific	22 memorandum exist or some record exist of what was

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<p>1 discussed at the exit and entrance conferences for 2 each of these reports?</p> <p>3 A. I don't know if they do.</p> <p>4 Q. Okay.</p> <p>5 A. If they did, they would be in the work 6 paper files.</p> <p>7 Q. And I take it that at the exit 8 conference, for example, for Exhibit Abbott 060, you 9 would have advised HCFA of each of the 10 recommendations contained within your report, 11 beginning at Page 7?</p> <p>12 A. Well, we would have advised them of the 13 main rec -- the recommendation is the bolded one --</p> <p>14 Q. Okay.</p> <p>15 A. -- and then the ones underneath it would 16 have been the options.</p> <p>17 Q. Okay. So you would have sat down with 18 them and told them in so many words, whatever, 19 Medicare, you, HCFA, should change -- you should 20 re-examine the Medicare drug reimbursement 21 methodologies that you use?</p> <p>22 A. We would say that is our recommendation.</p>	<p>1 these exit conferences to your recommendations?</p> <p>2 MR. NEAL: The same objection.</p> <p>3 THE WITNESS: Sometimes they would say 4 okay. I think sometimes they might have technical 5 issues with the report, I mean, in general.</p> <p>6 BY MR. COOK:</p> <p>7 Q. If we were to try to determine what 8 actually was said at these exit and entrance 9 conferences, is it fair to say that the best source 10 would be to go to the notes prepared and kept in 11 the working file for each of these exit and 12 entrance conferences?</p> <p>13 A. I think the best source now would be 14 that. I mean, people might have better memories 15 than I do, but...</p> <p>16 Q. Yeah. And you and I could probably have 17 a better discussion of it if we had those notes to 18 work from, right?</p> <p>19 A. I would be able to read the notes and 20 tell you what's in the notes.</p> <p>21 Q. You might remember something from 22 reading those notes, right?</p>
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<p>1 Q. All right. Do you recall, from any of 2 these exit or entrance conferences, any specific 3 comments made by any HCFA official?</p> <p>4 MR. NEAL: I'll object to the form.</p> <p>5 You can answer that yes or no.</p> <p>6 THE WITNESS: I don't remem -- recall any 7 specific comments.</p> <p>8 MR. NEAL: Or I don't remember.</p> <p>9 MR. COOK: Yeah.</p> <p>10 BY MR. COOK:</p> <p>11 Q. Do you have any general sense of what 12 the comments were or the feedback you would get 13 from HCFA would be at these exit conferences?</p> <p>14 MR. NEAL: The same objection.</p> <p>15 You can answer that yes no or --</p> <p>16 THE WITNESS: I don't --</p> <p>17 MR. NEAL: -- I don't remember.</p> <p>18 THE WITNESS: -- remember for this report 19 what their comments were.</p> <p>20 BY MR. COOK:</p> <p>21 Q. For all of your drug pricing reports, do 22 you have any sense of how HCFA was reacting at</p>	<p>1 A. I don't know until I read the notes.</p> <p>2 Q. Fair enough. Nor do I. Do you remember 3 at any point that HCFA, relating to any of these 4 drug -- any drug pricing report that you did, that 5 HCFA resisted a recommendation made --</p> <p>6 MR. NEAL: Objection.</p> <p>7 BY MR. COOK:</p> <p>8 Q. -- by OIG?</p> <p>9 MR. NEAL: Objection.</p> <p>10 You can answer that yes, no, or I don't 11 remember.</p> <p>12 THE WITNESS: I remember them not always 13 saying, you know, that they agree with every one of 14 these points. I mean, it wasn't the purpose of the 15 entrance conference to tell us what they agreed or 16 not agreed with formally. That's the purpose of 17 the written comments.</p> <p>18 Q. Okay.</p> <p>19 MR. COOK: And, John, just so I have it 20 clear, what's your objection?</p> <p>21 MR. NEAL: I believe the substance of the 22 entrance and exit conferences would get to the</p>

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<p>1 deliberative process privilege. So to the extent      2 that she doesn't remember any of those      3 conversations specifically, you know, and she's      4 just talking about what generally happens at, you      5 know, these particular meetings, that's certainly      6 fine.</p> <p>7 To the extent that she has a specific      8 recollection of, you know, what's happened at an      9 exit conference and who recommended what, and what      10 the back and forth was, we would interpose an      11 objection and instruct her not to answer.</p> <p>12 MR. COOK: Okay. And just briefly for      13 the record, could you explain to me what the      14 deliberative process privilege basis is for these      15 discussions?</p> <p>16 MR. NEAL: The exit conferences are very      17 fundamental to the deliberative process. It is      18 officials from HCFA and officials from OIG sitting      19 down and hashing out what the appropriate response      20 is to a draft study. Formal comments are      21 published, and you certainly have access to those,      22 but that's after a venting process. You know, the</p>	<p>1 formal comments.</p> <p>2 Q. One thing that's absolutely clear is      3 that at all of these exit conferences, the Office      4 of Inspector General clearly stated its      5 recommendations, as reflected in these reports, to      6 the agency, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And repeatedly told HCFA that average      9 wholesale price exceeded acquisition cost, correct?</p> <p>10 MR. NEAL: Objection as to form.</p> <p>11 THE WITNESS: The exit conferences for      12 the reports where we provided information for      13 certain drugs, that -- the data that we had found,      14 we would have presented that to CMS during those      15 exit conferences.</p> <p>16 BY MR. COOK:</p> <p>17 Q. Any question in your mind that the HCFA      18 officials who attended those exit conferences      19 walked away with any doubt about the      20 recommendations being made by HCFA [sic] with      21 respect to drug pricing and reimbursement?</p> <p>22 MR. NEAL: I'll object to the form.</p>
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<p>1 back and forth -- the predecisional back and forth      2 that takes place at these exit conferences, as Ms.      3 Ragone has generally described them, is fundamental      4 to the deliberative process of the agency.</p> <p>5 BY MR. COOK:</p> <p>6 Q. Is it fair to say, Ms. Ragone, that as      7 your counsel has indicated, that in these exit      8 conferences, you would have a back and forth with      9 the agency about what their policy should be?</p> <p>10 A. That occurs at some --</p> <p>11 Q. And in these --</p> <p>12 A. -- exit conferences.</p> <p>13 Q. And in these drug pricing reports, for      14 example, Exhibit Abbott 060, and other drug pricing      15 reports that you prepared, you would, in these exit      16 conference, have a back-and-forth discussion with      17 HCFA about whether they should continue basing      18 their reimbursement based upon average wholesale      19 price, correct?</p> <p>20 A. I can't recall what the back and forth      21 was. Some reports have back and forth. Some      22 reports they basically go, okay, and you'll get our</p>	<p>1 THE WITNESS: I don't know what they were      2 feeling or not feeling.</p> <p>3 BY MR. COOK:</p> <p>4 Q. Did you and colleagues at OIG make it      5 clear to them what your recommendations were?</p> <p>6 MR. NEAL: The same objection.</p> <p>7 THE WITNESS: We would state the findings      8 and the recommendations as they were written in the      9 working draft at that time.</p> <p>10 BY MR. COOK:</p> <p>11 Q. And as clearly as you could?</p> <p>12 A. Yes.</p> <p>13 Q. And your goal was to communicate those      14 findings as bluntly and clearly as you could,      15 correct?</p> <p>16 A. The goal was --</p> <p>17 MS. POLLACK: Objection to form.</p> <p>18 MR. NEAL: The same objection.</p> <p>19 You can answer.</p> <p>20 THE WITNESS: The goal was to communicate      21 them as they were written in the report.</p> <p>22 BY MR. COOK:</p>

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<p>1 Q. And so, for example, can we assume that      2 in the exit interview for this June 1996 study on A      3 Comparison of Albuterol Sulfate Prices, OIG clearly      4 communicated to HCFA that, in reading from the      5 Recommendation section: Using the median of the      6 published average wholesale prices does not reflect      7 the actual wholesale pricing of Albuterol Sulfate      8 that is occurring in the marketplace?</p> <p>9 MR. WINGET-HERNANDEZ: Objection to form;      10 calls for speculation.</p> <p>11 MR. NEAL: I'll join the objection.      12 You can answer.</p> <p>13 THE WITNESS: I'm not sure that we read      14 them that exact sentence. They would have been      15 provided a copy of the report with that sentence in      16 it.</p> <p>17 BY MR. COOK:</p> <p>18 Q. And the goal of your meeting would have      19 been to convey that finding, among others, correct?</p> <p>20 A. The goal of the meeting would have been      21 to convey the findings and recommendations.</p> <p>22 Q. Do you recall any official from HCFA on</p>	<p>1 average wholesale prices reflect actual market      2 prices?      3 A. Saying that exact statement, I don't      4 remember.</p> <p>5 Q. Expressing that sentiment?      6 A. Well, they would --      7 MR. NEAL: I'm going to object to the      8 form.</p> <p>9 THE WITNESS: They would express      10 sentiment -- they didn't always agree with our      11 findings. They did not always agree with our      12 findings and recommendations, so...</p> <p>13 BY MR. COOK:</p> <p>14 Q. But I'm trying to focus on average      15 wholesale price and whether average wholesale price      16 reflects actual market prices.</p> <p>17 In all of your conversations with HCFA      18 officials, do you recall any conversation in which      19 any official ever expressed to you a belief that      20 average wholesale price reflects actual market      21 prices?</p> <p>22 MR. WINGET-HERNANDEZ: Objection to --</p>
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<p>1 any occasion, whether an exit conference or      2 otherwise, denying that published average wholesale      3 prices exceed actual wholesale pricing in the      4 marketplace?</p> <p>5 MR. NEAL: Objection.      6 You can answer that yes no or...</p> <p>7 THE WITNESS: I don't recall what was      8 said at the entrance and exit conferences.</p> <p>9 BY MR. COOK:</p> <p>10 Q. But to be clear, in all of the      11 conversations that you had with HCFA officials over      12 the years relating to the work that you've done in      13 these reports, you don't recall a single instance      14 in which a HCFA official expressed to you a belief      15 that average wholesale prices represent actual      16 market prices?</p> <p>17 MR. NEAL: Objection.      18 THE WITNESS: I don't remember ever      19 having that conversation.</p> <p>20 BY MR. COOK:</p> <p>21 Q. But you don't remember a HCFA official      22 ever telling you that that official believed that</p>	<p>1 MR. NEAL: I'm going to object -- I'm      2 going to object to the form.      3 I'm going to instruct you to answer that      4 as either a yes, no, I don't remember.</p> <p>5 THE WITNESS: I don't remember.</p> <p>6 BY MR. COOK:</p> <p>7 Q. So you don't remember any instance in      8 which a HCFA official expressed that sentiment to      9 you?</p> <p>10 A. I do not remember.</p> <p>11 Q. And you've had several conversations      12 with folks in the industry outside of HCFA as well,      13 correct?</p> <p>14 A. We've had -- the office has had      15 conversations with industry.</p> <p>16 Q. Right. Who have you personally had      17 conversations with in the drug industry about these      18 drug pricing issues?</p> <p>19 A. I --</p> <p>20 MR. NEAL: I'll object to the form.      21 You can answer.</p> <p>22 THE WITNESS: I've heard -- I've heard</p>

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<p>1 communications to HCFA during the exit conference.</p> <p>2 MR. COOK: If you'd just instruct her not</p> <p>3 to answer. Are you instructing her not to answer?</p> <p>4 MR. DRAYCOTT: I am.</p> <p>5 BY MR. COOK:</p> <p>6 Q. So you make whatever communications you</p> <p>7 do to HCFA in these exit conferences --</p> <p>8 MR. DRAYCOTT: Objection.</p> <p>9 BY MR. COOK:</p> <p>10 Q. -- after giving them a copy of this</p> <p>11 report, right?</p> <p>12 MR. DRAYCOTT: Objection.</p> <p>13 And you're instructed not to answer.</p> <p>14 BY MR. COOK:</p> <p>15 Q. And you make your recommendations,</p> <p>16 correct?</p> <p>17 MR. DRAYCOTT: You can answer that</p> <p>18 question.</p> <p>19 THE WITNESS: During the exit</p> <p>20 conferences, we will tell them the findings and</p> <p>21 recommendations.</p> <p>22 BY MR. COOK:</p>	<p>1 acquisition cost by as much as ten times?</p> <p>2 MR. DRAYCOTT: You can answer as to</p> <p>3 whether or not they responded without revealing the</p> <p>4 response, if you remember.</p> <p>5 THE WITNESS: I believe that they stated</p> <p>6 why they were using the reimbursement strategy they</p> <p>7 were using at that time.</p> <p>8 BY MR. COOK:</p> <p>9 Q. And what was their explanation?</p> <p>10 MR. DRAYCOTT: Objection.</p> <p>11 And you're instructed not to answer.</p> <p>12 BY MR. COOK:</p> <p>13 Q. Why do you believe HCFA continued to use</p> <p>14 average wholesale price to pay for Medicare Part B</p> <p>15 drugs after you issued this report in December</p> <p>16 1997?</p> <p>17 MR. DRAYCOTT: Objection.</p> <p>18 And you're instructed not to answer to</p> <p>19 the extent your belief is based on communications</p> <p>20 from HCFA during an exit conference.</p> <p>21 BY MR. COOK:</p> <p>22 Q. I'll let you work out that metaphysical</p>
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<p>1 Q. And you encourage them, that is,</p> <p>2 officials at HCFA, to reimburse prescription drugs</p> <p>3 based upon something other than the published</p> <p>4 average wholesale price?</p> <p>5 MR. DRAYCOTT: Objection.</p> <p>6 You're instructed not to answer.</p> <p>7 BY MR. COOK:</p> <p>8 Q. And, in fact, you do so heatedly,</p> <p>9 correct?</p> <p>10 MR. DRAYCOTT: Objection.</p> <p>11 And you're instructed not to answer.</p> <p>12 BY MR. COOK:</p> <p>13 Q. And they respond?</p> <p>14 MR. DRAYCOTT: You can answer whether or</p> <p>15 not they responded.</p> <p>16 THE WITNESS: If they have comments, they</p> <p>17 will respond when we provide the findings and</p> <p>18 recommendations.</p> <p>19 BY MR. COOK:</p> <p>20 Q. Did they explain why HCFA continued to</p> <p>21 pay based upon AWP, notwithstanding the fact that</p> <p>22 HCFA knew average wholesale price could exceed</p>	<p>1 problem.</p> <p>2 A. I -- I believe --</p> <p>3 MR. DRAYCOTT: Well --</p> <p>4 THE WITNESS: -- that the --</p> <p>5 MR. DRAYCOTT: Let me ask you: Can you</p> <p>6 answer that question without revealing the content</p> <p>7 of communication from HCFA during the conference?</p> <p>8 THE WITNESS: I believe I can. I believe</p> <p>9 I can.</p> <p>10 MR. DRAYCOTT: Okay.</p> <p>11 THE WITNESS: I believe that the level of</p> <p>12 people that we were talking to believed that the</p> <p>13 regulations or legislations were set for payment at</p> <p>14 a certain place and that that's what Medicare was</p> <p>15 bound to reimburse at.</p> <p>16 BY MR. COOK:</p> <p>17 Q. Who at HCFA is responsible for setting</p> <p>18 Medicare Part B drug payment policy?</p> <p>19 A. Policy?</p> <p>20 Q. What the amount is that they would pay.</p> <p>21 A. I believe that would be regulated or</p> <p>22 legislated.</p>

19 (Pages 481 to 484)

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